In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-828

KENNETH BRATKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of conspiracy to steal goods moving in an interstate shipment, and of theft of certain cameras, photographic material, and film constituting part of an interstate shipment, in violation of 18 U.S.C. 371 and 659.[1] He was sentenced to a total of 10 years' imprisonment.

The court of appeals affirmed on September 29, 1972

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[1] Co-defendants Emil Crovedi and Roy Neilsen have also filed petitions for writs of certiorari, which raise an independent issue. See Nos. 72-5815 and 72-5824.

(Pet. App. A) and denied a petition for a rehearing (and suggestion for rehearing *en banc*) on November 2, 1972 (Pet. App. B). An application for an extension of time within which to file a petition for a writ of certiorari was denied by Mr. Justice Rehnquist on December 4, 1972. The petition for a writ of certiorari was not filed until December 6, 1972, and is therefore out of time under Rule 22(2) of the Rules of this Court. There is in any event no cause for further review.

Petitioner contends that there was an improper limitation on his right to cross-examine government witnesses as to their present addresses and employment. The trial court sustained objections to these questions after a *voir dire* hearing in which it was determined that the witnesses had reason to fear for their personal safety. The relevant factual background showing that statements had been made threatening the lives of these witnesses and that they had ample reason to fear that the threats were serious is contained in the opinion of the court of appeals (Pet. App. 2-3). In addition, as the court noted, the witnesses were not strangers to the defense; they were alleged co-conspirators and admitted participants in the crimes, and the defense was fully able to cross-examine them on issues relating to their credibility without disclosure of their current residence.[2]

Based on those facts and examination of the relevant authorities, the court of appeals rejected petitioner's

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[2] A somewhat different issue might be presented if petitioner could suggest some special or particular prejudice that might have resulted from failure to obtain answers to these questions, but no such specific prejudice has been claimed.

claim. This issue is also thoroughly canvassed in *United States* v. *Saletko*, 452 F. 2d 193, 196 (C.A. 7), certiorari denied, 405 U.S. 1040.[5] We rely upon the reasoning of those decisions in urging that the present petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1973.

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[5] *Saletko* arose out of the same factual circumstances and involved one of the same witnesses as did the instant case. In addition to the cases cited in *Saletko* on the decision to refuse disclosure, see *United States* v. *Lawler*, 413 F. 2d 622, 627 (C.A. 7), certiorari denied, 396 U.S. 1046.

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